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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/622,491	07/21/2003	Brian Roberts	10750-250	4988
1059	7590	10/20/2005	EXAMINER	
BERESKIN AND PARR 40 KING STREET WEST BOX 401 TORONTO, ON M5H 3Y2 CANADA			LARSON, JUSTIN MATTHEW	
			ART UNIT	PAPER NUMBER
			3727	

DATE MAILED: 10/20/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/622,491	Applicant(s) ROBERTS, BRIAN	
	Examiner Justin M. Larson	Art Unit 3727	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 July 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 21 July 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>11/03, 9/04, 3/05, 7/05 JML</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Information Disclosure Statement

1. The information disclosure statements (IDS) submitted on 9/10/04, 3/31/05, and 7/15/05 are noted. The submissions are in compliance with the provisions of 37 CFR 1.97 and 1.98. Accordingly, the examiner is considering the information disclosure statements.

Specification

2. The following guidelines illustrate the preferred layout for the specification of a utility application. These guidelines are suggested for the applicant's use.

Arrangement of the Specification

As provided in 37 CFR 1.77(b), the specification of a utility application should include the following sections in order. Each of the lettered items should appear in upper case, without underlining or bold type, as a section heading. If no text follows the section heading, the phrase "Not Applicable" should follow the section heading:

- (a) TITLE OF THE INVENTION.
- (b) CROSS-REFERENCE TO RELATED APPLICATIONS.
- (c) STATEMENT REGARDING FEDERALLY SPONSORED RESEARCH OR DEVELOPMENT.
- (d) THE NAMES OF THE PARTIES TO A JOINT RESEARCH AGREEMENT
- (e) INCORPORATION-BY-REFERENCE OF MATERIAL SUBMITTED ON A COMPACT DISC (See 37 CFR 1.52(e)(5) and MPEP 608.05. Computer program listings (37 CFR 1.96(c)), "Sequence Listings" (37 CFR 1.821(c)), and tables having more than 50 pages of text are permitted to be submitted on compact discs.) or
REFERENCE TO A "MICROFICHE APPENDIX" (See MPEP § 608.05(a). "Microfiche Appendices" were accepted by the Office until March 1, 2001.)
- (f) BACKGROUND OF THE INVENTION.
 - (1) Field of the Invention.
 - (2) Description of Related Art including information disclosed under 37 CFR 1.97 and 1.98.
- (g) BRIEF SUMMARY OF THE INVENTION.
- (h) BRIEF DESCRIPTION OF THE SEVERAL VIEWS OF THE DRAWING(S).
- (i) DETAILED DESCRIPTION OF THE INVENTION.
- (j) CLAIM OR CLAIMS (commencing on a separate sheet).

- (k) ABSTRACT OF THE DISCLOSURE (commencing on a separate sheet).
- (l) SEQUENCE LISTING (See MPEP § 2424 and 37 CFR 1.821-1.825. A "Sequence Listing" is required on paper if the application discloses a nucleotide or amino acid sequence as defined in 37 CFR 1.821(a) and if the required "Sequence Listing" is not submitted as an electronic document on compact disc).

3. The disclosure is objected to because of the following informalities:

Sections/headings are underlined and/or in bold. Please note, "Each of the lettered items should appear in upper case, without underlining or bold type, as a section heading." Appropriate correction is required.

4. The disclosure is further objected to because in several instances, the letter "e" has somehow been omitted from words. For instance, page 3 lines 1, 2, and 31, and page 7 lines 1 and 31. These are only examples of the error and the entire document should be checked and corrected. Appropriate correction is required.

Claim Objections

5. Claim 10 is objected to because of the following informalities: The letter "e" has somehow been omitted from several words in line 32. Appropriate correction is required.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 1-9 are rejected under 35 U.S.C. 102(b) as being anticipated by Grunberger (4,088,252). Grunberger discloses a backpack, comprising: a backpack

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body (1), the backpack body defining at least one storage compartment; the backpack body having a back-facing face, the back-facing face having at least one air channel defined thereon (12 or 13), wherein the at least one air channel has at least one opening at the periphery of the back-facing face; at least one shoulder strap (50) connected to the backpack body, wherein the at least one shoulder strap is adapted for mounting the backpack on a wearer; wherein the at least one air channel (12) extends generally vertically from the top of the back-facing face; wherein one of the at least one air channel (12 or 13) is positioned to face the spine of a wearer when in use, and is sufficiently deep so as to avoid contact with the spine of the wearer when in use; wherein the at least one air channel (13) extends generally horizontally between two sides of the back-facing face; wherein the at least one air channel has a plurality of openings (Figure 3 - top, left, bottom, right) that are in fluid communication with ambient air; and finally, wherein the first channel (12) and second channel (13) are in fluid communication with each other.

8. Claims 10-15 are rejected under 35 U.S.C. 102(b) as being anticipated by Shook (5,911,348). Shook discloses a backpack (1), comprising: a backpack body (2); the backpack body defining at least one storage compartment; the backpack body having a back-facing face (10); at least one shoulder strap (6) connected to the backpack body, wherein the at least one shoulder strap is adapted for mounting the backpack on a wearer; at least one cushion (8) on the back-facing face, wherein the cushion is compliant so that when the backpack contains a load and is worn by the wearer, the cushion distributes at least a portion of the weight of the load over a portion of the back

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of the wearer (col. 3 lines 62 - col. 4 line 18); wherein the back-facing face has a bottom and the at least one cushion is positioned proximate the bottom and is positioned to engage the lumbar region of the back of the wearer (Figure 1C - the two lower pads, col. 3 lines 48-50); wherein the at least one cushion includes two cushions and wherein the cushions are positioned to engage the shoulder blades of the wearer (Figure 1C - the four upper pads, col. 3 lines 45-48); wherein the two cushions define a channel therebetween, the channel extending generally vertically along a region of the back-facing face facing the spine of a wearer when in use (col. 3 lines 19-23), so that the spine of the wearer is substantially free of contact with the backpack; wherein the at least one cushion includes three cushions (there are five cushions 8); and wherein the at least one cushion is the only portion of the backpack body that contacts the back of the wearer (Figure 3A).

9. Claims 10 and 16 are rejected under 35 U.S.C. 102(b) as being anticipated by Leja (5,573,166). Leja discloses a backpack (12), comprising: a backpack body (2); the backpack body defining at least one storage compartment; the backpack body having a back-facing face (20); at least one shoulder strap (40) connected to the backpack body, wherein the at least one shoulder strap is adapted for mounting the backpack on a wearer; at least one cushion (34) on the back-facing face, wherein the cushion is compliant so that when the backpack contains a load and is worn by the wearer, the cushion distributes at least a portion of the weight of the load over a portion of the back of the wearer; and wherein the at least one cushion has an open mesh covering (32).

Regarding the limitation of claim 16 that requires the cushion to be of sufficient porosity to permit the flow of air to a portion of the back of the wearer that is covered by the at least one cushion, the cushion of Leja is disclosed as being foam which is a light, porous material used for shock absorption and is therefore considered by Examiner to be of sufficient porosity, since no degree of porosity was specifically set forth by applicant.

Claim Rejections - 35 USC § 103

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. Claims 17 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ivarson et al. (6,474,524) in view of Wolfgram (2002/0088834). Ivarson et al. discloses a backpack, comprising: a backpack body, the backpack body having a back-facing face (16), the backpack body defining at least one storage compartment having a bottom (14), wherein the bottom portion of the backpack is angled upward and away from the back-facing face, but fails to disclose semi-rigid boards positioned along the back-facing face and the bottom.

Wolfgram, however, teaches that it is known in the art of backpack construction to use a rigid back board (14) and a rigid bottom board (16) on the interior of a bag, around which the exterior walls (22) of the bag are wrapped. Wolfgram teaches that these boards offer both vertical and horizontal support to the backpack ([29]).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the backpack of Ivarson et al. by including semi-rigid back and bottom boards along the interior faces of the bag, as taught by Wolfgram, in order to increase the structural integrity of the backpack and to maintain the general shape of the backpack even when a heavy load is carried within.

12. Claim 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ivarson et al. in view of Wolfgram, and further in view of Shook. Ivarson et al. in view of Wolfgram discloses the claimed invention except for the backpack comprising a plurality of cushions positioned on the back-facing face, wherein the plurality of cushion are positioned on all regions of the back-facing face that contact the back of the wearer when in use.

Shook, however, teaches that it is desirable to include a plurality of cushions positioned on the back-facing face of a backpack in order to provide ventilation along a user's back. The pads (8) of Shook are shown positioned on all regions of the back-facing face that contact the back of the wearer when in use, as (Figure 3A) clearly shows the back-facing face of the backpack no longer in contact with the user's back.

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the backpack of Ivarson et al. in view of Wolfgram by including pads along the back-facing face of the backpack, as taught by Shook, in order to allow air to pass between the backpack and the user's back, keeping the user cooler and more comfortable.

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13. Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ivarson et al. in view of Wolfgram, and further in view of Gausling et al. (6,164,509). Ivarson et al. in view of Wolfgram discloses the claimed invention except for the backpack body having at least one cinch strap for cinching the away-facing face and the back-facing face of the backpack body towards each other.

Gausling et al., however, teaches that it is already known in the art to include cinching straps (400) on the sides of a backpack body so that a user may adjust the shape of the backpack body by compressing or expending the side panels, which effectively urges the back-facing panel (210) and away-facing panel (208) toward or away from each other.

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the backpack of Ivarson et al. in view of Wolfgram by including cinching straps on the sides of the backpack body, as taught by Gausling et al., so that a user may adjust the size or volume of the backpack body depending on what it is they intend to carry in the backpack.

Conclusion

14. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Justin M. Larson whose telephone number is (571) 272-8649. The examiner can normally be reached on M-Th 7-5:30.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan J. Newhouse can be reached on (571) 272-4544. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JML


NATHAN J. NEWHOUSE
SUPERVISORY PATENT EXAMINER